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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,582	01/11/2002	Takeshi Ishizu	040679-1403	9230

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FOLEY AND LARDNER  
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3000 K STREET NW  
WASHINGTON, DC 20007

EXAMINER

GIBSON, ERIC M

ART UNIT	PAPER NUMBER
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3661

DATE MAILED: 01/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/030,582

Applicant(s)

ISHIZU ET AL.

Examiner

Eric M Gibson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Matsuoka et al. (US005038880A).

a. As per claim 1, Matsuoka teaches a vehicle speed control system including a coast switch (19, figure 1), a controller connected to the coast switch (8, figure 1), where the controller controls the vehicle speed by controlling the throttle and automatic transmission (control signals A and B, figure 1) and maintains a gear ratio of the automatic transmission when the coast switch is being operated (column 7, line 67 – column 8, line 2).

b. As per claim 7, Matsuoka teaches a method of vehicle speed control including controlling the throttle and automatic transmission (control signals A and B, figure 1), detecting whether the set vehicle speed is being decreased (column 5, lines 50-52) and maintaining a gear ratio of the automatic transmission when the vehicle cruise speed device is being operated (column 7, line 67 – column 8, line 2).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsuoka in view of Leising et al. (US005778331A).

a. As per claim 2, Matsuoka teaches a vehicle speed control system including a vehicle cruise speed setting device (16, figure 1), a controller connected to the vehicle cruise speed setting device (8, figure 1), where the controller controls the vehicle speed by controlling the throttle and automatic transmission (control signals A and B, figure 1) and maintains a gear ratio of the automatic transmission when the vehicle speed device is being operated (column 7, line 67 – column 8, line 2).

Matsuoka does not explicitly teach maintaining the gear ratio for a time period. Leising

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teaches a vehicle speed control system which uses a transmission kick down delay inhibit feature to maintain a current gear ratio of the transmission when the vehicle speed is decreasing for a time period (column 8, lines 48-62), in order to prevent excessive downshifts in the vehicle. It would have been obvious to one of ordinary skill in the art, at the time of invention, to maintain the gear ratio for a time period in the system taught by Matsuoka, in order to prevent excessive downshifts in the vehicle as taught by Leising.

b. As per claim 3, the system of Matsuoka commands the transmission to prohibit from executing a shift down when the vehicle speed is being decreased by the vehicle cruise speed setting device (column 7, line 67 – column 8, line 2).

c. As per claim 4, Matsuoka teaches that the system starts a deceleration control when the set vehicle speed is decreased (column 5, lines 50-52).

d. As per claim 5, Matsuoka teaches a set switch (17, figure 1), a coast switch (19, figure 1) and an accelerate switch (set switch 17 is used also to accelerate, see column 5, lines 29-30).

e. As per claim 6, Matsuoka teaches determining throttle-opening amounts for engine braking when the vehicle speed is higher than the target vehicle speed. The throttle opening and engine speed are related through known methods in the art (see Nakamura (US005758306A) column 7, lines 65-66 for example).

***Response to Arguments***

3. Applicant's arguments filed 11/3/2003 have been fully considered but they are not persuasive.

a. On pages 5-6 of the reply filed 11/3/2003, the applicant states "neither these recited features nor their attendant advantages are disclosed or suggested by the applied prior art." However, the recited feature and attendant advantages to which the applicant refers are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

b. On page 6 of the reply filed 11/3/2003, the applicant states that the Matsuoka reference "allows a downshift when the coast switch is on based on a determination according to the ascent of the traveling road." However, as admitted by the applicant, Matsuoka *does* teach that the shift down operation is prohibited if the vehicle is in an ascending condition. While Matsuoka does not teach maintaining the shift down operation in *all* possible conditions, it teaches the limitation claimed in the rejected claims, namely "maintaining a gear ratio of the automatic transmission at a gear ratio set at a moment before decreasing vehicle the set vehicle speed when the coast switch is being operated to decrease the vehicle speed". This limitation is expressly met by the teaching of Matsuoka.

c. On page 6 of the reply filed 11/3/2003, the applicant makes similar arguments with respect to the Leising reference that under certain conditions, downshifts do occur. However, as noted in the discussion of the Matsuoka reference,

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there are no express limitations in the claims that the maintenance of the gear ratio be maintained permanently, therefore the Leising reference teaches the limitations as claimed.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric M Gibson whose telephone number is (703) 306-4545. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski can be reached on (703) 308-3873. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

EMG

  
MICHAEL J. ZANELLI  
PRIMARY EXAMINER